IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1171 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARSI ANJUMAN PANCHAYAT TRUST

Versus

VALIBAI HARIBHAI BHANDARI

Appearance:

MR SH SANJANWALA for Petitioner No. 1

MR ARUN H MEHTA for Respondents No. 1-7

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/01/2002

ORAL JUDGEMENT

The petitioner before this Court is Parsi Anjuman Panchayat Trust [hereinafter referred to as, `the Trust']. The Trust challenges the judgment and order dated 20th July, 1989 passed by the learned Gujarat

Revenue Tribunal [hereinafter referred to as, `the Tribunal'] in Revision Application No. TEN.B.S No. 508 of 1983.

The dispute pertains to the land bearing Survey No. 210, admeasuring 9 Acres-14 Gunthas, situated at village Nargol, Taluka-Umbergaon, District-Valsad. The Mamlatdar & ALT, Umbergaon initiated proceeding under section 32 (1B) of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act'] suo motu in Tenancy Case No. 1356 in respect of the said lands. Notices were issued upon the tenants-the respondents herein and the Trust. The Mamlatdar & ALT was, under his order dated 30th August, 1982, pleased to hold that the tenants had failed to establish that they were in possession of the said land on the appointed day i.e., 15th June, 1955 and that the names of the tenants were deleted under order dated 30th December, 1956 in respect of which the revenue entry no. 1650 had been made on 11th January, 1957 and has also been certified on 20th January, 1957. The oral evidence given by the respondent no. 1, the widow of the deceased tenant was found to be self-contradictory and unreliable. The respondent no. 2, the son of the deceased tenant had been reported to have been residing in United Kingdom for some twenty years. The daughters of the deceased tenant were married off and were settled in their matrimonial homes. The Mamlatdar & ALT, therefore, held that the Trust was not proved to have dispossessed tenants unlawfully and that the respondents were not entitled to restoration of the possession of the said land. Feeling aggrieved, the respondents preferred Tenancy Appeal No. 122 of 1983 before the Deputy Collector [Appeals], Valsad. The Deputy Collector [Appeals], under his judgement and order dated 17th February, 1982 was pleased to hold that the Trust had failed to discharge its burden to prove that the tenants were not unlawfully dispossessed. He, therefore, set-aside the order of the Mamlatdar & ALT and remanded the matter to the Mamlatdar & ALT for hearing and decision afresh. The said order was challenged by the Trust before the Tribunal in Revision Application No. 508 of 1983 which has been dismissed on 20th July, 1989. Therefore, the petition.

In the present proceeding, the Trust has filed an affidavit and has stated that the Trust had made all the efforts to obtain the proceedings under which the above referred order dated 20th December, 1956 was made and the revenue entry no. 1650 was entered in the revenue records. However the same, being very old record, is not available in the concerned office.

Be it noted that the finding recorded by the Mamlatdar & ALT that the deceased tenant was not in possession; that the tenants had not proved their possession of the said lands as on 15th June, 1955, has not been reversed either by the Deputy Collector or by the Tribunal. The only ground on which the remand is ordered is that of the non-production of the above referred order dated 20th December, 1956. Both, the Tribunal and the authority below, were of the opinion that it was the liability of the Trust to establish that the possession of the said land was taken over from the tenant lawfully or that the tenant was not dispossessed unlawfully. I am of the view that the order dated 20th December, 1956 and the revenue entry no. 1650 made on 11th January, 1957 shall be presumed to have been made in accordance with law, unless the contrary is proved. In the present proceedings, it is not even the case of the tenants that the said order and the entry thereof were not made in accordance with law nor the same have been proved to be made erroneously or in contravention of the law. In absence of such allegations or evidence, the Tribunal and the authority below have erred in not believing the said entry. For invoking the provisions contained in section 32 (1B) of the Act, the tenant is required to establish that he was in possession of the land in question as on the appointed day i.e., 15th June, 1955 and that he was dispossessed before the tillers' day i.e., 1st April, 1957 without following the due procedure of law. In the present case, neither of the two conditions precedents having been satisfied, the order of the Mamlatdar & ALT was required to be confirmed. In my view, the Tribunal and the authority below have wrongly remanded the matter for the Mamlatdar & ALT to consider the veracity of the above referred order dated 20th December, 1956 and the revenue entry no. 1650. Such an exercise is unwarranted and uncalled for, as I have held that the said order and the entry have to be presumed to have been made in accordance with law.

There being no other issue on which the order of remand is made, the impugned judgment and order of the Tribunal dated 20th July, 1989 passed in Revision Application No. 508 of 1983 and the order dated 17th October, 1982 of the Deputy Collector, Valsad made on Appeal No. 122 of 1983 are quashed and set-aside. The order of the Mamlatdar & ALT, Umbergaon dated 30th August, 1982 made in Tenancy Case No. 1356 is restored. Rule is made absolute. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*